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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW JERSEY

THE DELACO COMPANY, INC.

Plaintiff

vs.

CIVIL ACTION

CENTURY INDEMNITY COMPANY, et al.

Case No.:

Defendants

**Notice of Removal of State Court Action to U.S. District Court**

PLEASE TAKE NOTICE that defendant Westchester Fire Insurance Company (“Westchester Fire”), through its undersigned counsel, hereby files this Notice of Removal pursuant to 28 U.S.C. §1452(a) and Federal Rule of Bankruptcy Procedure 9027(a). Westchester hereby removes to the District Court of New Jersey all claims and causes of action in the civil action styled *The Delaco Company v. Century Indemnity Company, et al.*, Docket No. MID-L-8852-03 MT, now pending in the Superior Court of New Jersey, Law Division, Middlesex County (the “State Court Action”).

The grounds for removal are as follows:

1. The State Court Action, initially filed on December 11, 2003 by the Delaco Company (“Delaco”) against Westchester Fire and other insurers, began as an action for declaratory relief related to the insurers’ defense and indemnity obligations in certain underlying products liability suits brought in jurisdictions across the country involving the use of Dexatrim, an appetite suppressant containing PPA (“PPA litigation”). The PPA litigation involves lawsuits filed against Delaco which is a successor corporation to Westchester’s insured, Thompson

Medical Company, in numerous state and federal courts regarding bodily injuries allegedly arising out of the ingestion of PPA.

2. Delaco filed the declaratory complaint in the Superior Court of New Jersey, Law Division, seeking declaratory relief against Westchester and other insurers alleging that the insurers are obligated to indemnify Delaco against any liability arising out of existing and future PPA litigation, as well as for reimbursement of defense costs in connection with the PPA litigation.

3. On or about January 13, 2004, Delaco filed an amended complaint seeking the same declaratory relief against a revised group of insurer defendants.

4. On February 12, 2004, Delaco filed a petition for relief under Chapter 11, Title 11, of the United States Code, in the United States Bankruptcy Court for the Southern District of New York. The Delaco bankruptcy case is being administered under the caption ***In Re: The Delaco Company***, Case No. 04-10899.

5. The PPA litigation is likely to be resolved, in substantial part, in Delaco's bankruptcy proceedings. Delaco's claims for reimbursement of insurance proceeds for amounts already incurred in the defense of the PPA litigation are claimed as assets of the estate. Declarations regarding coverage for PPA claims may have a significant effect on the administration of the bankruptcy estate due to the large number of PPA lawsuits pending and the possibility that many PPA claimants will file proofs of claim in Delaco's bankruptcy case.

6. The Bankruptcy case is pending in a federal court within the Second Circuit, however, the State Court Action, upon removal, will be pending in a federal court within the Third Circuit. Should the law of the Second Circuit apply, this case is a core proceeding; however, should the law of the Third Circuit apply, then this case is a non-core proceeding. Should this case be determined to be a non-core proceeding, Westchester does not consent to the entry of final orders or judgment by the Bankruptcy court.

7. Westchester Fire files this Notice of Removal pursuant to 28 U.S.C. §1452(a) within the time required by law for removal under the Federal Rule of Bankruptcy Procedure 9027.

8. The District Court has subject matter jurisdiction over the State Court Action and the claims and causes of action asserted therein pursuant to 28 U.S.C. §1334(b), in that they are related to the Bankruptcy case, a case under Title 11 of the United States Code.

9. Plaintiffs have demanded a jury trial in the State Court Action.

10. Westchester expressly reserves the right to raise all defenses and objections to the State Court Action after it is removed to the District Court.

11. In accordance with 28 U.S.C. §1452 and Federal Rule of Bankruptcy Procedure 9027, copies of all process and pleadings in the State Court Action are attached hereto and incorporated by reference.

12. Westchester Fire has provided written notice of this Notice of Removal to counsel of record for all parties and a true and complete copy of this Notice of Removal has been filed in the State Court Action.

Dated: February 19, 2004

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By: s/Jeffrey A. Lesser  
**Jeffrey A. Lesser**

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the within Notice of Removal of State Court Action to U.S. District Court was served this date, February 18, 2004, by electronic mail upon all counsel of record and a copy of the Notice of Removal of State Court Action to U.S. District Court will be electronically posted on Verilaw in accordance with the provisions of Case Management Order No. 1A. In addition, a copy was hand delivered to McCarter & English, counsel for Delaco on this date.

s/Jeffrey A. Lesser  
Jeffrey A. Lesser